

Remarks

Examiner continues to maintain that Madden (5,389,378) anticipates (35 USC § 102(b)) claims 1, 2, 6, 8, 10 and 11, based on the abstract and col. 7 line 8 through col. 9 line 62. Also that claims 1, 2, 6, 8, 10-11 and 13 are made obvious (35 USC § 103 (a)) by Desai et al. (?6,074,666?) in view of Madden ('378). [as in the last reply, we have presumed the Desai et al. reference is the same as in the first action, since it is not identified in this action.]

Also in connection with a divisional application Ser. No. 11/298,729, filed 9 December, 2005; examiner has identified a potential double-patenting concern.

Apparently examiner, while stressing full antecedent identification in dependent claim language, does not accept that if members of a disclosed genus do not function in a new invention, while other members do satisfy the invention, can and does represent a novel, non-obvious discovery. Merely identifying members and a genus and teaching that the whole genus does work, essentially equally well, does not provide guidance to future workers who find examples grouped together, or exemplified as preferred embodiments which do not function properly in the new invention/discovery. The chemical field is an inexact science and requires more definition to establish that one possesses an invention. Undue experimentation cannot be required by a teaching to fit a set of claims. If a whole sub-genus, preferred chemical structures or a large group of members of a claimed and taught genus fail to meet the criterion of a new invention, it must be that significant experimentation would be required to 'discover' the new relationships and uses described in the new disclosure and invention. This is a principle of the patent laws and the Patent Office's directions in its MPEP.

We have scheduled a meeting in person, towards the end of February, to discuss this case and the three related cases arising from this initial disclosure/application. We also recognize that to remove the potential for double-patenting a decision on which of the two open docket should be pursued. Hopefully during our visit with the examiner, these items will all be able to be resolved.

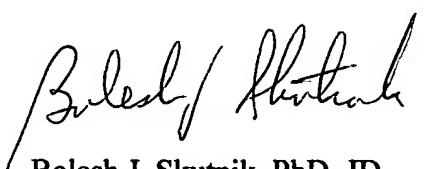
All previous traverses as presented here as well. Specifically 'synthetic' phospholipids have been found by the present inventors to behave differently in the formulations of the present invention than those phospholipids, which are naturally derived.

With these remarks and exposition of terms within the previously amended claims it is believed that the disclosure is now or will be after direct discussions with the examiner, in condition for further analysis and allowance. Reconsideration is respectfully requested. An early and favorable response is earnestly solicited. Thank you.

Respectfully submitted,

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